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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1903.~~ 1904.

No. ~~276.~~ 96.

THE UNITED STATES, APPELLANT,

vs.

WALTER S. CROSLEY.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 25, 1903.

(19027)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 376.

THE UNITED STATES, APPELLANT,

vs.

WALTER S. CROSLEY.

APPEAL FROM THE COURT OF CLAIMS.

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1 Court of Claims.

WALTER S. CROSLEY
vs.
THE UNITED STATES. } No. 22391.

I. *Petition.*

Claimant's petition in this case was filed October 30, 1900.

On September 11, 1901, the claimant, by leave of court, filed his amended petition in lieu of his original petition, which is as follows:

2 *Amended petition.*

[Filed Sept. 11, 1901, in lieu of original petition filed Oct. 30, 1900.]

To the honorable the Court of Claims:

The claimant, Walter S. Crosley, respectfully represents:

1. The claimant entered service in the United States Navy on the 9th day of September, 1889, and on the 1st day of July, 1899, until the 8th day of September, 1900, and thereafter, was a lieutenant, junior grade, in the Navy of the United States and an aid to Rear-Admiral J. C. Watson; that Rear-Admiral Watson was at that time embraced in the nine higher numbers of the grade of rear-admiral and was entitled, under § 1466 of the Revised Statutes, to rank with a major-general in the United States Army.

2. By virtue of the provisions of the act of March 3, 1899, § 13, known as the navy personnel act, the claimant became entitled, on the 1st day of July, 1899, to the pay provided by law for an officer of corresponding rank in the Army.

From the 1st day of July, 1899, to the 8th day of September, 1899, he was entitled to pay at the following annual rate:

3

Pay of a first lieutenant in the Army, being the grade corresponding to lieutenant, junior grade, in the Navy, under Revised Statutes, § 1261	$1,500
Longevity pay under Revised Statutes, § 1262, for second five years of service	150
Pay as aid to rear-admiral of corresponding grade to major-general, under Revised Statutes, § 1261	200
Mounted pay due under Army Regulations of 1895, paragraph 1301, to "authorized aids duly appointed"	100
Longevity pay upon the last two items under Revised Statutes, § 1262	30
Total	$1,980

That from September 9, 1899, to September 8, 1900, he was entitled to pay as follows:

Pay of a first lieutenant in the Army under Revised Statutes, § 1261	$1,500
Longevity pay under Revised Statutes, § 1262, for third five years of service	300
Pay as aid to rear-admiral of corresponding grade to major-general, under Revised Statutes, § 1261	200

Mounted pay due under Army Regulations of 1895, paragraph 1301	$100
Longevity pay on the last two items under Revised Statutes § 1262	60
Total	$2,160

3. During the whole of the period stated, from July 1, 1899, to September 9, 1900, the claimant was paid at the rate of $1,800 a year, this being for the period from July 1, 1899, to September 8, 1899, the rate of pay granted by Revised Statutes, § 1556, to a lieutenant, junior grade, at sea during his first five years in said rank, and for the period from September 9, 1899, to September 8, 1900, this being also the rate
4 of pay fixed by Revised Statutes, § 1261, for a first lieutenant not mounted, with the longevity increase allowed by Revised Statutes, § 1262, in the third five years of service, without any additional allowance for his service as aid under the statutes and army regulation heretofore set forth.

4. The difference between the pay received by him at the rate of $1,800 a year from July 1 to September 8, 1899, and the pay due him at the rate of $1,980 a year during the same period, is $34; the difference between the pay received by him at $1,800 a year from September 9, 1899, to September 8, 1900, and the pay due him at $2,160 a year for the same period, is $360, making a total of $394 to which he is justly entitled and for which he makes claim.

5. This claim has not been presented to any of the Executive Departments of the Government for the reason that the Comptroller of the Treasury has held that such extra pay can not be recovered.

No other action than as aforesaid has been had on this claim in Congress or by any of the Departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true. And the claimant claims the sum of three hundred and ninety-four dollars ($394).

GEORGE A. & WM. B. KING,
Attorneys for Claimant.

5 DISTRICT OF COLUMBIA, *ss:*

William B. King, being duly sworn, deposes and says: I am one of the attorneys for the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

WM. B. KING.

Subscribed and sworn to before me this 11th day of September, 1901.

[SEAL.] MARTHA M. BECK,
Notary Public.

Request for findings of fact.

The claimant, considering the facts hereinafter set forth to be proven, and deeming them material to the due presentation of this case in the findings of fact, requests the court to find the same as follows:

I.

The claimant entered service in the United States Navy on the 9th day of September, 1889, and from the 1st day of July, 1899, until the 8th day of September, 1900, was a lieutenant, junior grade, in the Navy, and an aid to Rear-Admiral J. C. Watson; Rear-Admiral Watson was at that time one of the nine higher numbers of the grade of rear-admiral and was entitled, under § 1466 of the Revised Statutes, to rank with a major-general in the United States Army. (See report of Navy Department, p. 9.)

II.

During said period claimant was paid at the rate of $1,800 a year. (See report of Treasury Department, p. 9.)

Brief.

The claimant, a lieutenant, junior grade, in the United States Navy, was an aid to Rear-Admiral J. C. Watson from July 1, 1899, to September 8, 1900. He claims extra pay for his service.

6 THE STATUTES.

The claim rests upon the terms of the navy personnel act of March 3, 1899 (§ 13, 2 Supp. R. S., 972; 31 Stat. L., 1007), as follows:

"That after June 30th, 1899, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army."

This provision requires an examination of the Army pay in order to find the proper rate of pay for any naval officer. Army pay is fixed by § 1261 of the Revised Statutes, as follows:

"The officers of the Army shall be entitled to the pay herein stated after their respective designations: * * *

"First lieutenant, mounted, sixteen hundred dollars a year.

"First lieutenant, not mounted, fifteen hundred dollars a year. * * *

"Aid to major-general, two hundred dollars a year in addition to pay of his rank."

Sec. 1262 provides for longevity pay as follows:

"There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years of service."

The statutes do not define what officers are mounted; that is left to be fixed by Army regulations. Paragraph 1301 of the Army regulations of 1895 is as follows:

"The following officers, in addition to those whose pay is fixed by law, are entitled to pay as mounted officers: Officers of the staff corps below

the rank of major, officers serving with troops of cavalry, officers
7 of a light battery duly organized and equipped, authorized aids duly appointed, officers serving with companies of mounted infantry, and officers on duty which, in the opinion of the department commander, requires them to be mounted and so certified by the latter on their pay vouchers."

Sec. 1466 of the Revised Statutes fixes the relative rank between officers of the Navy and officers of the Army and gives rear-admirals rank with major-generals, and masters, a title later changed to lieutenant (junior grade), with first lieutenants in the Army.

THE PAY RECEIVED.

The claimant was paid during the whole period at $1,800 a year. This is the rate of pay appropriate to a lieutenant (junior grade) in the Navy at sea during his first five years in that grade (R. S., § 1556); it is also pay of a first lieutenant in the Army in his third five years of service (R. S., §§ 1261, 1262). As the claimant entered the naval service on the 9th day of September, 1899, as shown by the Naval Register, and was appointed a lieutenant (junior grade) on March 3, 1899, he was, during the whole of the period in question, in his first five years in that grade and, up to September 8, 1899, was in his second five years in the service, and from September 9, 1899, in his third five years in the service. His pay at Army rates up to September 8, 1899, would have been but $1,650, being $1,500 as the minimum pay and one longevity increase. He received $1,800, however, under the saving clause of § 13 of the navy personnel act, as follows:

"That no provision of this act shall operate to reduce the present pay of any commissioned officer now in the Navy; and in any case in which the pay of such an officer would otherwise be reduced he shall continue to receive pay according to existing law."

8 After September 8, 1899, his pay at Army rates would have been $1,800.

THE PAY CLAIMED.

His claim as now made is very accurately set forth in the petition, and consists of the demand for three additional allowances: (1) The special pay granted to an aid to a major-general under Revised Statutes, §1261; (2) the allowance made to such officer under Army Regulations, paragraph 1301, as mounted pay, and (3) longevity increase upon both these amounts.

The purpose of this action is to place the claimant, as an officer of the Navy, in a similar situation to that in which the officers of the Army now stand. The object of §13 of the Navy personnel act is to create an equality between the Army and the Navy (Rogers v. United States, 36 C. Cls.). Equal rank in the naval service is to have equal pay to that granted in the Army.

When an Army officer is appointed an aid to a major-general the law gives him extra pay for it. The principle of equality demands that the same extra pay shall be given to a naval officer appointed to similar duty as an aid to an officer of corresponding rank in the Navy. This increase

of pay given to an aid to a major-general consists of three parts—the fixed annual increase, the allowance as mounted pay, and the longevity increase. Unless all three of these are equally granted to the naval officer he is at a disadvantage as compared to the corresponding grade in the military service.

THE COMPTROLLER'S DECISION.

The Comptroller of the Treasury considered a similar case and took the ground (6 Comp. Dec., 154) that, as the right of a general officer in the Army to aids was a right conferred by special statute, only
9 the aids appointed specifically under those statutes were entitled to the extra pay; that Navy aids were appointed under other authority of law, and consequently were not entitled to the pay granted to aids appointed as provided in the law governing the Army. This view is of an extremely technical character, and overlooks entirely the controlling purpose of the personnel act in granting equal pay to officers of equal rank and duty. If aids to major-generals in the Army are given additional pay for their additional responsibility, then similar officers in the Navy, performing like duty, are to have a like increase. That their selection for this duty is in a somewhat different manner and under a different authority of law is a matter of form and does not affect the substantive right. The principle of equal pay for equal duty being established by law, the courts will look for substantial rather than formal differences to warrant differences in pay.

CONCLUSION.

"The key to the opening of every law is the reason and spirit of the law; it is the 'animus imponentis,' the intention of the lawmaker expressed in the law itself taken as a whole." (Brett v. Brett, 3 Add. Eccl., 210, quoted in Black on Interpretation of Laws, 167.) It is this principle which this court expressed and followed in Rodgers v. United States, 36 C. Cls., in construing this statute. The clear intent of this law is equality between the Army and Navy, and that intent has been violated in the refusal to pay this claimant the sums here claimed. Judgment should be rendered for the claimant for $394.

Attached to this brief are the reports of the Navy and Treasury Departments showing the facts of record upon which the claim is based.

GEORGE A. & WILLIAM B. KING,
Attorneys for Claimant.

10 *Report of Navy Department.*

NAVY DEPARTMENT,
Washington, November 14, 1900.

SIR: Referring to the call of the Department of Justice, dated the 31st ultimo, in the case of Walter S. Crosley v. The United States, in the Court of Claims, No. 22391, I have the honor to state that it appears from the records that claimant was, during the period from May 16, 1899, until September 8, 1900, a lieutenant (junior grade) in the United States Navy, and served on the staff of Rear-Admiral J. C. Watson, as flag secretary.

A more detailed reply is not made for the reason that it appears from an examination of the petition filed in the case that the matters in controversy relate to the acts of the accounting officers of the Treasury in the adjustment of claimant's pay.

Very respectfully,

J. D. LONG, *Secretary.*

Report of Treasury Department.

TREASURY DEPARTMENT,
OFFICE OF AUDITOR FOR THE NAVY DEPARTMENT,
Washington, May 6, 1901.

WALTER S. CROSLEY
v.
THE UNITED STATES. } 22391.

The Honorable the Secretary of the Treasury:

SIR: Replying to the rule of the honorable Court of Claims in the above entitled cause, herewith returned, I have the honor to report that the claimant was paid from July 1, 1899, to September 10, 1900, at $1,800 per annum (after September 9, 1899, his Army and Navy sea pay were the same). From September 11, 1900, to November 6, 1900, he was paid Army shore pay at $1,530 per annum, and from November 7, 1900, to March 31, 1901, he was paid at $1,800 per annum. This rate of pay was the same for sea service under section 1556 Revised Statutes or section 13 of the Navy personnel act.

Respectfully,

JOHN M. EWING, *Acting Auditor.*

11 II. *Traverse filed November 12, 1902.*

In the Court of Claims of the United States, December term, A. D. 1902.

WALTER S. CROSLEY
v.
THE UNITED STATES. } No. 22391.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney-General.

12 III. *Findings of fact and conclusion of law, and opinion of the court, filed January 5, 1903.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

The claimant entered service in the United States Navy on the 9th day of September, 1889, and from the 1st day of July, 1899, until the

8th day of September, 1900, was a lieutenant, junior grade, in the Navy, and an aid to Rear-Admiral J. C. Watson; Rear-Admiral Watson was at that time one of the nine higher numbers of the grade of rear-admiral, and was entitled under section 1466 of the Revised Statutes to rank with a major-general in the United States Army.

II.

During said period claimant was paid at the rate of $1,800 a year.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant recover judgment of and from the United States in the sum of three hundred and ninety-four dollars ($394.00).

HOWRY, J., delivered the opinion of the court:

Plaintiff's claim is for extra pay on account of service rendered as lieutenant, junior grade, in the Navy from July 1, 1899, to September 8, 1900, as an aid to a rear-admiral. He claims the pay granted by section 1261 of the Revised Statutes given to an aid serving as such to a major-general in the Army, and next the mounted pay provided by paragraph 1301 of the Army Regulations.

The act of March 3, 1899 (sec. 13, 2 Supp. R. S., 972; 30 Stats., 1007), provides as follows: "That after June 30, 1899, commissioned officers of the line of the Navy and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army."

Section 1098 of the Revised Statutes provides as follows: "Each major-general shall have three aids, who may be selected by him from captains or lieutenants of the Army."

Army pay is fixed by section 1261 of the Revised Statutes as follows:

"The officers of the Army shall be entitled to the pay herein stated
13 after their respective designations: * * * First lieutenant, mounted, sixteen hundred dollars a year; first lieutenant, not mounted, fifteen hundred dollars a year, * * * aid to major-general, two hundred dollars a year, in addition to pay of his rank."

Section 1262 provides for longevity pay as follows:

"There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years of service."

In refusing payment the accounting officers have acted upon the opinion of the Comptroller of the Treasury, who, in considering a similar question, has held that as the right of a general officer in the Army to aids is a right conferred by special statute, only the aids specifically appointed under those statutes are entitled to the extra pay; and inasmuch as a naval aid is appointed under other authority of law such naval aid is consequently not entitled to the pay granted to aids appointed as provided in the law governing the Army; that is, that additional pay to aids in the Army granted by section 1261 of the Revised Statutes applies only to those aids provided for in section 1098.

And further, that pay to an aid to a major-general is not pay provided by law "for the officers of corresponding rank in the Army," being pay for duty and not for rank. (6 Comp. Dec., 154.)

Plaintiff was not detailed under the provisions of section 1469. That section authorizes the detail of a line officer to act as the aid or executive of the commanding officer of a vessel of war or naval station, which officer of the line, when not impracticable, is to rank next to the commanding officer. The officer referred to in this statute is the immediate assistant of the commanding officer of a vessel who is usually of rank below a rear-admiral, or of a station. This plaintiff was not that kind of an aid or executive. But he was an aid to a rear-admiral. Such aids are appointed under paragraphs 343 and 345, Naval Regulations of 1895, as follows:

"343. The chief of staff, flag lieutenant, clerk, and aids shall constitute the personal staff of a flag officer."

"345. (1) A flag officer may select any officer of his command to serve as flag lieutenant or clerk, provided his grade accords with the rules laid down in article 344.

"(2) He may also, when necessary, select other line officers junior to the flag lieutenant to serve on his personal staff as aids, but shall not assign naval cadets to such duty."

The duties of naval aids provided for in the regulations are regulated by the chief of staff, subject to the flag officer; and such aids are subject to the internal regulations and the routine of the ship; and their duties, except when ordered by the captain of the ship, do not relate to the vessel itself, but are personal to the commanding officer. (Par. 347, Navy Reg.) The duties of aids to general officers in the Army are not prescribed, but such aids are of course subject to the control and direction of the officer upon whose staff they serve. (Pars. 32 to 36, Army Reg.)

From the foregoing it will be seen that the duties of aids to rear-admirals are substantially the same as the duties of aids to generals. In each case the duties are personal to the commanding officers. As the regulations are not drawn in question and no doubt arises as
14 to the authority of the Secretary of the Navy to make the regulations, the appointment of aids to rear-admirals is as much authorized by law as the appointment of aids to generals under statute. Whether the aids are appointed under statute for one arm of the service or under regulations for another the results are the same as far as the character of the service is concerned.

The additional pay to the army officer is in the nature of an allowance. It goes to his rank, depends on rank, and is extra pay for special service. In the case of a naval officer duly appointed aid to a rear-admiral the extra pay is likewise for rank and special service. The Navy personnel act attempted to assimilate the pay, and did so as far as conditions admit of the application of the act. It is not for the courts to add to or take from the act where the pay for a similar service rendered by a naval officer can be assimilated to that of an officer of corresponding rank in the Army.

It is true that if the Secretary of War should assign any number of aids to an officer which he might deem advisable, only the number author-

ized can be allowed the additional compensation provided by law. The appointment and payment of such additional aids would be an enlargement of the statutes providing aids for generals, and a regulation which should undertake to provide for such additional appointments with pay would not be valid.

The Secretary of the Navy does not run counter to the statutes in making regulations providing a personal staff for a rear-admiral. The rank of an officer so assigned being shown to be the same, and the special service being performed in a similar manner, similar pay is the consequence.

The Army regulation gives the pay of mounted officers "to authorized aids duly appointed." But mounted pay is not always synonymous with mounted service, as there may be mounted pay without actual mount. An officer in the Army serving as an aid may sometimes be where, in the performance of duty, he can not be mounted. Again, such an officer may sometimes be where he can be mounted and yet where he is not mounted. An aid to a general doing duty on some small island or at the seat of government either can not use a horse or he may not have one. Nevertheless, the statutes in such cases provide the mounted pay, despite the actual conditions which may prevent the use of a horse in the one case or render unnecessary the keep of a horse in the other. The officer in such cases would only be deprived of the allowance of forage.

The Navy personnel act undertook to establish an equality of pay proper between officers of the Army and officers of the Navy corresponding in rank. There is an incongruity between naval duties and mounted service, and yet the statute has applied the same amount of pay to authorized aids, like those we have been considering, in both branches of the service. The equality of pay fixed by the statute and the application of the equality here more fully appear in another cause, by which this branch of the case must be governed. (Richardson *v.* United States, 38 C. Cls. R., ——.)

Judgment will be entered for plaintiff in the amount set forth in the conclusions of law.

15 IV. *Judgment of the court.*

WALTER S. CROSLEY
v.
UNITED STATES. } No. 22391.

JANUARY 5, 1903.

At a Court of Claims held in the city of Washington judgment was ordered to be entered as follows:

The court, on due consideration of the premises, finds for the claimant, and do order, adjudge, and decree that the claimant, Walter S. Crosley, do have and recover of and from the United States the sum of three hundred and ninety-four dollars. ($394.00.)

BY THE COURT.

16 V. *Application for and allowance of appeal.*

WALTER S. CROSLEY
v.
UNITED STATES. } No. 22391.

From the judgment rendered in the above-entitled cause on the 5th day of January, 1903, in favor of the claimant, the defendants, by their Attorney-General, on the 18th day of March, 1903, make application for and give notice of an appeal to the Supreme Court of the United States.

L. A. PRADT,
Assistant Attorney-General.

Filed March 18, 1903.
Order: Let the appeal be allowed.
July 2, 1903.

C. C. NOTT,
Chief Justice.

17 Court of Claims.

WALTER S. CROSLEY
v.
UNITED STATES. } No. 22391.

I, John Randolph, assistant clerk of the Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law filed by the court, of the opinion of the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 8th day of July, A. D. 1903.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) File No., 19027. Court of Claims. Term No., 376. The United States, appellant, vs. Walter S. Crosley. Filed July 28th, 1903.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

THE UNITED STATES, APPELLANT,
v.
WALTER S. CROSLEY.
} No. 96.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The claimant, during the period mentioned in his petition, was a lieutenant, junior grade, in the Navy and an aid to Rear-Admiral J. C. Watson, who during that time was one of the nine higher numbers of the grade of rear-admiral, ranking with a major-general in the United States Army. The officer of corresponding rank in the Army to that of the claimant is a first lieutenant. He brought this action in the Court of Claims to recover, in addition to the pay allowed him during said period by the accounting officers, the $200 per year provided by section 1261, Revised Statutes, as the pay of an aid to a major-general; also to recover the difference between the pay received by him and the mounted pay of a first lieutenant in the Army.

The Court of Claims allowed his claim, and gave him judgment in the sum of $394. From this judgment the United States appeals to this court, and makes the following

ASSIGNMENT OF ERRORS:

First. The court erred in its conclusion of law in holding that the claimant recover "judgment of and from the United States in the sum of $394."

Second. The court erred in ordering judgment to be entered in favor of the claimant in any amount whatever.

ARGUMENT.

In determining the issues here presented, it is necessary to consider the following statutes:

> That after June 30, 1899, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army. (Part of section 13, act of March 3, 1899, known as the "Navy Personnel Act.")

Section 1098, Revised Statutes, provides, in part:

> Each major-general shall have three aids, who may be selected by him from captains or lieutenants of the Army.

Section 1261, Revised Statutes, provides in part as follows:

> The officers of the Army shall be entitled to the pay herein stated after their respective designations: * * * First lieutenant, mounted,

> sixteen hundred dollars a year; first lieutenant, not mounted, fifteen hundred dollars a year, * * * aid to major-general, two hundred dollars a year, in addition to pay of his rank.

Paragraph 1301 of the Army Regulations provides in part:

> The following officers, in addition to those whose pay is fixed by law, are entitled to pay as mounted officers: Officers of the staff corps below the rank of major, officers serving with troops of cavalry, officers of a light battery duly organized and equipped, authorized aids duly appointed, officers serving with companies of mounted infantry, and officers on duty which, in the opinion of the department commander, requires them to be mounted and so certified by the latter on their pay vouchers.

Section 1466, Revised Statutes, fixes the relative rank between officers of the Navy and officers of the Army, and gives rear-admirals rank with major-generals and masters with first lieutenants in the Army. The title "master" was subsequently changed to "lieutenant, junior grade," which is the rank held by claimant, and he holds the same relative rank as a first lieutenant in the Army. Section 1261, Revised Statutes, designates first lieutenants, mounted and not mounted, thereby recognizing the condition applicable to officers of that class dependent upon whether they belong to the cavalry or infantry service. A lieutenant in the cavalry is presumed to be mounted, a lieutenant in the infantry is presumed not to be mounted, and the classification of "mounted" and "unmounted" pay was intended in a

general way to mark a distinction between the pay of an officer engaged in the cavalry and an officer engaged in the infantry service.

Having determined claimant's rank, which is that of lieutenant, junior grade, in the Navy, it should not be difficult to ascertain his pay, by reference to the pay of an officer of the same rank in the Army, and we here insist that it is a question of rank which determines the pay and not the character of the service which the officer performs. The position of aid to either a major-general or to a rear-admiral is not a distinct rank, within the meaning of the law.

If the $200 paid to an aid to a major-general is, as assumed by Mr. Justice Howry, speaking for the Court of Claims, "The additional pay to the Army officer is in the nature of an allowance. It goes to his rank, depends on rank, and is extra pay for special service" (Rec., p. 8), or if it is extra pay of the officer of corresponding rank in the Army to that of the claimant, for special service, then the decision of the Court of Claims would seem to be well founded, because it would be in accordance with the provisions of the naval personnel act giving to officers in the Navy the same pay and allowances as are provided by law for officers of corresponding rank in the Army, the spirit of which statute is, as we think, clearly that the pay of officers of corresponding rank in the two branches of the service shall be the same for similar services or services under like official circumstances. But the difficulty with this proposition is that the $200 in question is by

the very terms of the statute not the pay of the rank of a lieutenant in the Army, the officer of corresponding rank with that of the claimant, but is explicitly the pay of an aid to a major-general, and given to such aid in addition to the pay of his rank, which rank, as provided for in section 1098, *supra*, may be either that of captain, first lieutenant, or second lieutenant. So that pursuant to these statutes an aid to a major-general receives two compensations, one the pay of his rank, whether captain, first lieutenant, or second lieutenant, and the other a fixed sum of $200 as aid and without reference to his rank. Since, then, this $200 is, by the terms of the statute, the pay of an aid to a major-general, it can not be said in any sense to be the pay of either a captain or a first lieutenant or a second lieutenant, but is simply what it is stated to be—the pay of an aid to a major-general. Now, whilst an aid to a rear-admiral undoubtedly performs services similar to those of an aid to a major-general, and whilst very probably justice would demand that he should receive the same pay therefor, the fact remains that there is no provision of statute assimilating the rank of an aid to a rear-admiral with that of an aid to a major-general, and therefore no claim based upon the navy personnel act can be made by an aid to a rear-admiral for the same compensation as that of an aid to a major-general. That is to say, the navy personnel act, very likely by oversight, leaves an aid to a rear-admiral in exactly the same position as it found him, with no provision for his compensation for his services as such aid.

When the language of a statute is plain and when it is not necessary to resort to any other means than the language itself in order to give an interpretation to the law, then a statute is said to interpret itself and it is not the province of the court to read into a statute what it does not express.

The court below in its opinion says, "The additional pay to the army officer is in the nature of an allowance." We do not think that the pay granted to aids is an allowance. An allowance is a fixed, stipulated sum that goes with the rank, and, as we have heretofore pointed out, officers of different ranks may be designated as aids, but the pay for acting as an aid does not go with the rank but depends solely upon service as aid, and is pay for such service which may be given to officers holding different ranks when they perform the duties of aids. It may be that Congress in thus legislating has done an injustice to the claimant and other naval officers who act as aids to rear-admirals in not giving to them the pay for such duties which is allowed to aids acting as such to major-generals, but if so, it is not the province of the court to correct the error.

MOUNTED PAY.

The claimant, of course, is not entitled to mounted pay by reason of acting as aid to a rear-admiral if the court should find that he is not entitled to $200 pay as aid, since the mounted pay is claimed as the pay of an aid to a major-general. But it may be contended that he should rank for the purpose of pay with a first

lieutenant mounted, and that therefore he is entitled to mounted pay. The increase in pay for mounted service follows the condition where the officer is compelled to keep a horse in order to the proper performance of his duties. No such condition is possible in sea service in the Navy. The right to mounted pay depends wholly upon the condition of mounted service, or a kind of service that requires the officer performing the same to be mounted, and since claimant was in a position where he could not have performed mounted service, and where such service was palpably inappropriate to his situation, it does not come within the conditions which entitle him to mounted pay.

L. A. PRADT,
Assistant Attorney-General.

JOHN Q. THOMPSON,
Special Attorney.

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Supreme Court of the United States

OCTOBER TERM, 1944

THE UNITED STATES, Appellant,

vs.

WALTER A. DOBLER.

Brief for Appellee

IN THE

Supreme Court of the United States.

October Term, 1904.

UNITED STATES, *Appellant*,
v.
WALTER S. CROSLEY. } No. 96.

BRIEF FOR THE APPELLEE.

Statement.

This is an appeal by the United States from the judgment of the Court of Claims allowing to the claimant, who was a lieutenant in the United States Navy, serving as aid to a rear admiral, the pay allowed to an aid to a major-general in the army.

The claim is based upon that portion of section 13 of the act of March 3, 1899, known as the Navy Personnel Act (30 Stat. L. 1007), which gives to commissioned officers in the line of the navy "the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army."

The claimant as a lieutenant, junior grade, in the navy corresponds in rank to a first lieutenant in the army (Revised Statutes, § 1466; Act of March 3, 1883, 22 Stat. L. 472). He received pay as follows:

Pay of a first lieutenant in the army, under Revised Statutes, § 1261	$1,500
Longevity pay under Revised Statutes, § 1262 for second five years of service	150

He claims to be entitled to the additional pay received by a first lieutenant in the army serving as an aid to a major-general, as follows:

Pay as aid to rear-admiral, an officer of corresponding grade to major-general, under Revised Statutes, § 1261	$200 00
Mounted pay due under Army Regulations of 1895, paragraph 1301, to "authorized aids duly appointed"	100 00
Longevity pay upon the last two items under Revised Statutes, § 1262	30 00

During a portion of the time covered by the claim he was entitled to two installments of longevity pay, increasing the amount of his pay but not affecting the principle involved. This is fully stated in the petition (rec. pp. 1–2).

Statutes.

The following statutes are relevant:

Act of March 3, 1899, § 13, Navy Personnel Act (30 Stat. L. 1007):

"That after June 30, 1899, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army."

Revised Statutes, § 1098:

"Each major-general shall have three aids, who may be selected by him from captains or lieutenants of the Army."

Revised Statutes, § 1261:

"The officers of the Army shall be entitled to the pay herein stated after their respective designations: * * * First lieutenant, mounted, sixteen hundred dollars a year; first lieutenant, not mounted, fifteen hundred dollars a year, * * aid to major-general, two hundred dollars a year, in addition to the pay of his rank."

Revised Statutes, § 1262:

"There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years of service."

Revised Statutes, § 1466:

"The relative rank between officers of the Navy, whether on the active or retired list, and officers of the Army, shall be as follows, lineal rank only being considered:

* * *

"Rear-admirals with major-generals

* * *

"Masters with first lieutenants."

Act of March 3, 1883 (22 Stat. L. 472):

* * * "One hundred masters, the title of which grade is hereby changed to that of lieutenants, and the masters now on the list shall constitute a junior grade of, and be commissioned as, lieutenants, having the same rank and pay as now provided by law for masters. * * *

Regulations.

Navy Regulations of 1896, Paragraphs 343, 345:

"The chief of staff, flag lieutenant, clerk, and aids shall constitute the personal staff of a flag officer."

"(1) A flag officer may select any officer of his command

to serve as flag lieutenant or clerk, provided his grade accords with the rules laid down in article 344.

"(2) He may also, when necessary, select other line officers junior to the flag lieutenant to serve on his personal staff as aids, but shall not assign naval cadets to such duty."

Army Regulations of 1895, Paragraph 131:

"The following officers, in addition to those whose pay is fixed by law, are entitled to pay as mounted officers: Officers of the staff corps below the rank of major, officers serving with troops of cavalry, officers of a light battery duly organized and equipped, authorized aids duly appointed, officers serving with companies of mounted infantry, and officers on duty which in the opinion of the department commander, requires them to be mounted and so certified by the latter on their pay vouchers."

Defenses.

Two defenses are raised in the appellant's brief.

Pay for Services as Aid.

The first relates to the whole claim. It is said that aid's pay is pay for special service and not pay due to rank. Consequently it is argued that the Personnel Act does not give this extra pay as that grants the pay of "officers of corresponding rank in the army."

Officers of the navy are granted by the Personnel Act "the same pay and allowances" as officers of the army. These words are used to describe the "entire compensation" of an officer of the army (*Emery* v. *United States*, 19 C. Cls. 266) and the evident purpose is that with the exception named in the act (forage) naval officers shall have what army officers receive.

The principle is well stated in the opinion of the Court of Claims in the case of *Thomas* v. *United States*, 38 C. Cls. 127, 128, upon the question of sea ration.

"The only allowance excepted is for forage, while the only exception in pay is, as set forth in the first proviso, 'that such officers, when on shore, shall receive * * * fifteen per centum less pay.'"

* * * * * * *

"The words 'same pay and allowances' would seem to indicate that the Congress intended, except as therein provided, to conform the pay and allowances of the commissioned officers of the line of the navy and of the medical and pay corps to the pay and allowances of 'officers of corresponding rank in the army.'"

The decision of the Court of Claims on that question was sustained by this court in *Gibson* v. *United States*, 194 U. S. 182, 192. This court there said:

"This section was intended to cover and in exact terms provides for all pay and allowances for naval officers except forage. Where it is the intention of the statute to make a distinction or exception in allowance, that exception is expressly stated. The subject matter of the later act provides for allowances to such officers, and it is to be the same as is now provided by law for army officers of corresponding rank."

The Court of Claims in applying this general doctrine to this case in the opinion herein (Rec. p. 8) said as follows:

"The additional pay to the army officer is in the nature of an allowance. It goes to his rank, depends on rank, and is extra pay for special service. In the case of a naval officer duly appointed aid to a rear-admiral the extra pay is likewise for rank and special service. The Navy Personnel Act attempted to assimilate the pay, and did so as far as conditions admit of the application of the act. It is not for the courts to add to or take from the act where the pay for a similar service rendered by a naval officer can be assimilated to that of an officer of corresponding rank in the Army."

The discrimination attempted to be made by the United States between pay for rank and pay for special duty clearly violates this principle of equality of pay. No reason can be given why such a discrimination should be maintained, and in fact the Government frankly admits that the omission maintained in its brief was (p. 5) "very likely by oversight."

Variable Rates of Army Pay.

The distinction does not find any root in the statute itself. Section 1261 of the Revised Statutes gives to the rank of first lieutenant two different rates of pay, "mounted" and "not mounted." These rates of pay vary under section 1262 according to the length of service of these officers. They may draw additional pay while serving as aids to brigadier or major-generals. On foreign service, after May 26, 1900, they may receive ten per cent increase of pay under the acts of May 26, 1900, and March 2, 1901 (31 Stat. L. 211, 903). Revised Statutes, § 1265, adds another rate of pay to all officers, that is, half pay while on leave beyond thirty days a year. Thus a first lieutenant in the army, depending upon whether he is on duty or on leave, at home or abroad, of recent entrance in the army or of long service, may receive no less than sixty different rates of pay as set forth in the following table:

TABLE OF PAY OF AN ARMY FIRST LIEUTENANT:

	Not mounted.	*Mounted.*	*Aid to Brig. Gen.*	*Aid to Major-Gen.*
1st 5 years.				
Home duty	$1500	$1600	$1750	$1800
Foreign service	1650	1760	1925	1980
Absent with leave	750	800	875	900
2d 5 years.				
Home duty	1650	1760	1925	1980
Foreign service	1815	1936	2117 50	2178
Absent with leave	825	880	962 50	990
3d 5 years.				
Home duty	1800	1920	2100	2160
Foreign service	1980	2112	2310	2376
Absent with leave	900	960	1050	1080
4th 5 years.				
Home duty	1950	2080	2275	2340
Foreign service	2145	2288	2502 50	2574
Absent with leave	975	1040	1137 50	1170
After 20 years.				
Home duty	2100	2240	2450	2520
Foreign service	2310	2464	2695	2772
Absence on leave	1050	1120	1225	1260

When an officer of a single rank may receive all these rates of pay, how fallacious it is to say that in putting officers of the navy upon the pay of officers of corresponding rank in the army Congress meant to single out one or more of these rates for the navy and destroy the principle of equality which the act plainly asserts. First lieutenants in the army receive pay made up of grade pay, longevity pay, foreign duty pay, mounted pay or pay for special duty, besides allowances. The supposed "pay for rank" can not be the "pay and allowances" intended by the Navy Personnel Act.

Intent of the Law.

In the case of *United States* v. *Thomas* just decided this court held that in construing together the Personnel Act and army pay statutes, the intent of Congress could be ascertained by inquiry into the effect in actual administration of the literal application of army pay laws to the navy. The army law giving increased pay for service

outside the United States was held not to apply to the navy because the navy was performing its usual duty when outside the United States and should therefore receive but its usual pay. The same principle requires that the army grant of pay to an aid to a major-general should also be applied to an aid to a rear-admiral since the duties are identical and the reasons for the one receiving the pay apply with equal force to the other.

"The key to the opening of every law is the reason and spirit of the law,—it is the '*animus imponentis*,' the intention of the lawmaker expressed in the law itself taken as a whole." (*Brett* v. *Brett*, 3 Add. Eccl. 210, quoted in Black on Interpretation of Laws, 167.) It is this principle which this court expressed and followed in construing this statute in *Rodgers* v. *United States*, 185 U. S. 83, and in *Gibson* v. *United States*, 194 U. S. 182. The clear intent of this law is equality between the army and navy and that intent has been violated in the refusal to pay this claimant the sums here claimed.

Mounted Pay.

Upon the question of mounted pay the defense is based upon a misunderstanding. The Army regulation, paragraph 1301, under which aids to major-generals draw mounted pay provides mounted pay whether the officer is or is not mounted. Section 1272 of the Revised Statutes gives forage to officers only for horses actually kept by them in service, but mounted pay is granted without regard to the question whether an officer has or has not a horse in service.

Thus by § 1168 of the Revised Statutes, assistant surgeons have the rank of lieutenant or captain of cavalry, while chaplains by § 1122 have the rank of captains of infantry, although the surgeon may be in a hospital, not requiring a horse, and the chaplain may be in the

field and need to be mounted. By the act of July 8, 1898, 30 Stat. L. 729, volunteer chaplains have "the pay and allowances of a captain mounted." No reason is shown why chaplains of volunteers need horses more than chaplains of the regular army; the distinction is one of pay.

Engineer officers of the army, being officers of staff corps, are all paid mounted pay under this regulation, although the duties of engineer officers in time of peace are to superintend river and harbor improvements, having their offices in cities and making their tours of inspection by railroad and steamboat.

The Court of Claims has well said of this question in its opinion in this case (rec. p. 9):

"The Army regulation gives the pay of mounted officers 'to authorized aids duly appointed.' But mounted pay is not always synonymous with mounted service, as there may be mounted pay without actual mount. An officer in the Army serving as an aid may sometimes be where, in the performance of duty, he can not be mounted. Again, such an officer may sometimes be where he can be mounted and yet where he is not mounted. An aid to a general doing duty on some small island or at the seat of government either can not use a horse or he may not have one. Nevertheless, the statutes in such cases provide the mounted pay, despite the actual conditions which may prevent the use of a horse in the one case or render unnecessary the keep of a horse in the other. The officer in such cases would only be deprived of the allowance of forage."

In a similar case, involving the right of the Medical Corps of the navy to mounted pay, the Court of Claims said in *Richardson* v. *United States*, 38 C. Cls. 194:

"The disallowance of forage was a discrimination against the officer of like grade or rank in the Navy, because the necessity of forage did not exist, and, therefore,

the right is not incident to the officer serving in the Navy, but in all other particulars his pay was left equal to the officer of like rank in the Army. The pay of the rank is taken as the basis of the pay of the claimant, and it is not based upon the theory that he may be mounted, but upon the basis that mounted pay is designated as the measure of his compensation."

This decision of the Court of Claims was not appealed to this court but accepted by the Attorney-General, and following this officers of the medical corps of the navy were paid mounted pay (9 Comp. Dec. 676). The Comptroller of the Treasury subsequently decided that officers of the pay corps of the navy are also entitled to mounted pay because officers of the pay corps of the army are given by law "the rank of captain mounted," they being among the officers recognized by the Army Regulations of 1895, Par. 131, as mounted officers.

The Comptroller says (10 Comp. Dec. 528):

"A careful examination of the numerous acts relating to the pay of army paymasters shows that their pay has always been assimilated to light dragoon or cavalry pay where such pay was greater than infantry pay.

"This fact is strongly persuasive, and I think that Congress has sufficiently shown its intention to make cavalry or mounted pay the measure of the compensation of paymasters of the army, and of extending the same kind of pay to paymasters of the navy by enactng in the Navy Personnel Act (30 Stat. L. 1007), that—

"'Commissioned officers of the line of the navy and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army.'

"I am of opinion, therefore, that officers of the pay corps of the navy are entitled to mounted pay."

It thus appears that it has not seemed anomalous either to the Court of Claims or to the Comptroller of the

Treasury to give mounted pay to officers of the navy, because the right to mounted pay in the army depends not upon keeping or riding a horse but upon being officers of certain staff or other designated classes.

The Navy Personnel Act gives to naval officers the pay of army officers "provided by or in pursuance of law." This includes not only the pay granted by direct statute but the pay allowed under the Army Regulations, in pursuance of law.

The equality of pay between the army and navy as fixed by the Personnel Act is intended to be a substantial equality. This can not exist unless under equivalent conditions in the two branches of the military service, the same pay is received. Army "pay and allowances" is made up of many different items. All these items (except forage) must be paid to the naval officer, or he will not have "the same pay and allowances" as given to the army officer.

The judgment of the Court of Claims is right and should be affirmed.

GEORGE A. & WILLIAM B. KING,
Attorneys for Claimant.

Supreme Court of the United States.

No. 96.—October Term, 1904.

The United States, Appellant, vs. Walter S. Crosley. } Appeal from the Court of Claims.

[January 23, 1905.]

This case was tried in the Court of Claims upon a petition filed to recover pay for services in the United States Navy, rendered by the defendant in error, while he was a lieutenant of the junior grade and acting as aide to Rear-Admiral Watson, then serving with the rank of rear-admiral in the nine higher numbers of that grade, and, under section 1466 of the Revised Statutes, entitled to rank with a major-general in the Army. The claimant alleges that he should have received from the 1st day of July, 1899, to the 8th day of September, 1899,—

Pay of a first lieutenant in the Army, being the grade corresponding to lieutenant, junior grade, in the Navy, under Revised Statutes, § 1261	$1,500
Longevity pay under Revised Statutes, § 1262, for second five years of service	150
Pay as aid to rear-admiral of corresponding grade to major-general, under Revised Statutes, § 1261	200
Mounted pay due under Army Regulations of 1895, paragraph 1301, to "authorize aides duly appointed"	100
Longevity pay upon the last two items under Revised Statutes, § 1262	30
Total	$1,980

That from September 9, 1899, to September 8, 1900, he was entitled to pay as follows:

Pay of a first lieutenant in the Army under Revised Statutes, § 1261	$1,500
Longevity pay under Revised Statutes, § 1262, for third five years of service	300
Pay as aid to rear-admiral of corresponding grade to major-general, under Revised Statutes, § 1261	200
Mounted pay due under Army Regulations of 1895, paragraph 1301	100
Longevity pay on the last two items under Revised Statutes, § 1262	60
Total	$2,160

He received pay during the period in controversy at the rate of $1,800 per annum, being from July 1, 1899, to September 8, 1899, the rate of pay granted by statute (Rev. Stat. § 1556) to a lieutenant, junior grade, at sea during his first five years in that rank, and for the period from September 9, 1899, to September 8, 1900, being the rate fixed by Revised Statutes, § 1261, for a first lieutenant not mounted, with the longevity allowance of the statute (§ 1262) for the third five years of service, and he claims that, in addition to the amount allowed, he is entitled to pay or allowance as aid to a rear-admiral; also, mounted pay due for such service, with the longevity pay arising from the items in question. In all, he claims the sum of $394.

The Court of Claims upon the hearing made the following findings of fact:

"The claimant entered service in the United States Navy on the 9th day of September, 1889, and from the 1st day of July. 1899, until the 8th day of September, 1900, was a lieutenant, junior grade, in the Navy, and an aid to Rear-Admiral J. C. Watson; Rear-Admiral Watson was at that time one of the nine higher numbers of the grade of rear-admiral, and was entitled, under section 1466 of the Revised Statutes, to rank with a major-general in the United States Army. During said period claimant was paid at the rate of $1,800 a year."

And as conclusions of law held:

"Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant recover judgment of and from the United States in the sum of three hundred and ninety-four dollars ($394)."

From the judgment of that court the United States appeals to this court.

Mr. Justice DAY delivered the opinion of the Court.

The decision of this case turns upon the answers to two questions arising under the facts stated. First, was the claimant entitled to the extra two hundred dollars, the same as allowed an aid to a major-general in the Army? Second, was he entitled to the "mounted pay" as allowed to the major-general's aid?

The Navy Personnel Act, so called, has been so frequently before this court in recent cases as to require little general discussion of its objects and purposes. (*Rogers* v. *United States*, 185 U. S. 83; *White* v. *United States*, 191 U. S. 545; *Gibson* v. *United States*, 194 U. S. 182; *United States* v. *Thomas*, decided at this term, 195 U. S. 418.)

As pointed out in the opinion in the last-named case, while the act of July 16, 1862, (Revised Statutes, sec. 1466,) had fixed the relative rank of army and naval officers, no provision for similarity of pay was made until the passage of the Navy Personnel Act, (30 Stat. 1004,) which act, while providing against a reduction of then existing pay of commissioned

officers of the Navy, undertook to equalize the pay of naval officers, (theretofore generally below that paid to officers of corresponding rank in the Army,) with that of officers in the Army of equal rank. Under the act of July 7, 1862, rear-admirals ranked with major-generals. Section 13 of the Navy Personnel Act provides:

"That after June 30, 1899, commissioned officers of the line of the Navy and of the Medical Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army."

The claimant, as lieutenant of the junior grade in the Navy, corresponded in rank with a first lieutenant in the Army, (Revised Statutes, sec. 1466,) the rank of "master," named in § 1466, being subsequently changed to lieutenant, junior grade. (22 Stat. 472.) By section 1098 of the Revised Statutes it is provided that each major-general shall have three aids, who may be chosen by him from the captains or lieutenants of the Army. First lieutenants, officers of the Army, under section 1261 of the Revised Statutes, are entitled to pay as follows:

"The officers of the Army shall be entitled to pay herein stated after their respective designations: . . . First lieutenant, mounted, sixteen hundred dollars a year; first lieutenant, not mounted, fifteen hundred dollars a year; . . . aid to major-general, two hundred dollars a year, in addition to the pay of his rank."

For each five years of service it is provided in section 1262:

"There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years of service."

The contention of the Government is that, while the pay of naval officers is made to correspond with that of army officers of like rank, the naval officer assigned to duty as aid may not receive the $200 additional pay, as it is not pay on account of rank, but on account of service. But we think this is too narrow a construction of the terms of the act, in view of its intent and purpose. For while we may not add to or take from the terms of a statute, the main purpose of construction is to give effect to the legislative intent as expressed in the act under consideration. An aid to a rear-admiral renders services similar to those rendered by an aid to a major-general in the Army. The Naval aids are appointed under paragraphs 343 and 345 of the Naval Regulations of 1895, which are:

"§ 343. The chief of staff, flag lieutenant, clerk and aids shall constitute the personal staff of a flag officer.

"§ 345. (1.) A flag officer may select any officer of his command to serve as flag lieutenant or clerk, provided his grade accords with the rules laid down in Article 344. (2.) He may also, when necessary, select other line officers junior to the flag lieutenant to serve on his personal staff as aids, but shall not assign naval cadets to such duty."

They are selected for like service, and it is admitted that there would have been reason for a like express statutory provision in their favor as to compensation. The sum of $200 is allowed to an aid to a major-general in addition to the regular pay of his rank. It is allowed as payment for the additional service imposed. Bearing in mind the purpose of the act to give the same compensation to corresponding officers of the Army and Navy, and that it is expressly provided that officers of the Navy shall receive the same pay and allowances, except for forage, as are or may be provided by law for officers of the Army of corresponding rank, we think it does no violence to, but rather carries out, the purpose of Congress to construe this section so as to give to an aid of a rear-admiral, in addition to the regular pay of his rank, pay similar to that allowed an aid to a major-general. We reach the conclusion that the Court of Claims was right in its allowance of this item.

The solution of the question as to mounted pay depends upon whether such pay is given to an officer whose duty requires him to be subject to mounted duty, or whether it is a term used to designate the pay of aides whether they are required to render mounted service or not. Section 1301 of the Army Regulations of 1905 provides:

"The following officers, in addition to those whose pay is fixed by law, are entitled to pay as mounted officers: Officers of the staff corps below the rank of major, officers serving with troops of cavalry, officers of a light battery duly organized and equipped, authorized aids duly appointed, officers serving with companies of mounted infantry, and officers on duty which, in the opinion of the department commander, requires them to be mounted and so certified by the latter on their pay vouchers."

The contention of the appellee is that aides, duly appointed under this section, serving in the Army, are entitled to this compensation, whether required to be mounted or not. And further, that the language "pay as mounted officers" is used in the paragraph rather with a view of fixing the amount to be paid than to characterize the service required. It is doubtless true that the terms mounted pay may be used in this sense. *Richardson* v. *United States*, (38 Ct. Clms. 182,) is cited as an illustration of this use of the phrase. In that case it was held that an assistant surgeon in the Navy was entitled to mounted pay under the Navy Personnel Act, because an assistant surgeon in the Army was entitled thereto. Under section 1168 of the Revised Statutes, an assistant surgeon in the Army ranked with a lieutenant of cavalry for the first three years of service, and with a captain of cavalry after the expiration of that period. Under these provisions the assistant surgeon was held entitled to mounted pay.

We are further cited to a decision of the Comptroller of the Treasury, (10 Comp. Dec. 523,) holding that officers of the Pay Corps of the Navy are entitled to mounted pay, as officers of the Pay Corps of the Army are given by law cavalry or mounted pay. It may well be that in these cases

mounted pay was descriptive of the compensation to be paid, and an officer may therefore be entitled to it, although he renders no mounted service.

But the right of mounted pay to an aid to a rear-admiral, assuming that the Navy Personnel Act assimilates the compensation of an admiral's aid to that of an aid to a major-general in the Army, depends upon whether an aid to a major-general under paragraph 1301 of the Army Regulations above quoted, although he renders no mounted service, and may not be required to be mounted, is entitled to such compensation. We think sections 1302 and 1303 of the Army Regulations may also be noticed in this connection. They are:

"SEC. 1302. Department commanders will announce, in orders, the authority obtained from the Secretary of War for mounting companies of infantry, giving the date from which such mounted service commences, and termination of the same.

"SEC. 1303. Muster rolls and returns of light batteries and companies of mounted infantry will show the number, date and source of order authorizing mounted service. The pay accounts of officers charging mounted pay will contain the same information. A copy of the order will be attached to the first muster rolls prepared after the battery or company has been equipped or mounted; a copy of the order discontinuing such service will appear on the first muster rolls prepared after its discontinuance."

We think these sections, with § 1301 of the Army Regulations above quoted, read in the light of the statute (Rev. Stat. § 1270) giving to Army officers the pay of cavalry officers of the same grade when assigned to duty which requires them to be mounted, indicate a general purpose to give to officers of the Army mounted pay when their duties are such as may require them to be actually mounted, or are such as may at any time subject them to the necessity of rendering mounted service. The particular section (1301,) under which it is insisted that a naval aid is entitled to mounted pay, designates officers who either are or may be required to be mounted in the discharge of their duties, and likewise to "officers on duty which, in the opinion of the department commander, requires them to be mounted and so certified by the latter on their pay vouchers."

This paragraph was intended to include the particular classes of officers who are entitled to pay as mounted officers under the classification in the first part thereof, and gives the benefit of the higher rate of compensation to other officers, not expressly named therein, whose duties require them to be mounted. It may be true, as argued at the bar, that there may be times when the duties of an aid to a major-general will not require him to be mounted. But, as we understand the Army Regulations, such officers may be at any time required to render mounted service, and are therefore given the pay of that class. Obviously, the duties of an aid to a rear-admiral are not such as to require him to render mounted service, and as the Navy Personnel Act only undertakes to afford a

measure of compensation for duties which can properly be required of a naval officer, it can have no operation to provide pay for services peculiar to the Army. As was held in *Thomas* v. *United States, supra*, it does not follow, because Congress gives special pay to army officers, that the same right of compensation applies to naval officers also. In that case it was held that an allowance to army officers who might be ordered to sea or a foreign port could not be given to naval officers whose regular duties require them to engage in service upon the sea and to cruise upon foreign waters and serve in foreign ports.

The present case affords still less reason for giving the pay of an Army officer to one in the Navy, where the compensation is given for a character of service which never can be required except in the Army.

Upon this branch of the case we think the Court of Claims was in error, and the judgment for mounted pay should not have been rendered in favor of the claimant.

The judgment of the Court of Claims is modified, disallowing the sums claimed in the petition and carried into the judgment on account of mounted pay and longevity pay based thereon, and, as modified, is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.